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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/10

SPONSOR Payne LAST UPDATED _____ HB _____

SHORT TITLE Public Utility and Cost Recovery SB 190

ANALYST Lucero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	Indeterminate, but expected to be very minimal, if any	Indeterminate, but expected to be very minimal, if any	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Public Regulation Commission (PRC)

New Mexico Environment Department (NMED)

SUMMARY

Synopsis of Bill

Senate Bill 190 proposes to enact a new section of the (PUA) to provide regulatory clarity concerning renewable energy distributed generation facilities. The bill defines "renewable energy distributed generation facility," "host," and "site."

Renewable energy distributed generation facilities are small-scale facilities located on the site of a "host" who is a customer of a public utility and integrated into the electricity provided by the utility. The bill expressly states that these facilities are not "public utilities" as defined by the PUA.

The bill provides that utilities can petition for approval of rate riders to recover the ancillary and standby costs of interconnection of these facilities, initially through the utility's renewable energy procurement plan, to be in effect until the next general rate case. The Public Regulation Commission (PRC) shall ensure that there is no double recovery of costs, and that system benefits are also considered.

Section 2 provides that an investor-owned utility may have approved, in a general rate case, “interconnected customer rate riders” to recover costs of ancillary and standby services incurred to serve customers deploying or purchasing distributed renewable generation.

The bill enables public utilities to create holding companies for the purpose of offering renewable energy related services, subject to terms and conditions that are in the public interest, and provided that there is no disruption of regulation over corporate allocations or jurisdictional rates.

Finally, the bill provides that any order of the PRC issued before January 1, 2011 that declares the public utility status of any owner of a distributed generation facility that sell electricity produced by the facility to be of no force or effect on or after May 19, 2010. The Commission is further required to submit a report to the legislature by December 31, 2012, identifying effectiveness of and recommending improvements to the state’s renewable energy distributed generation program.

FISCAL IMPLICATIONS

If renewable energy distributed generation facilities are not public utilities, then they are not required to pay the inspection and supervision fee as provided by Section 62-8-8 NMSA. Currently, distributed generation is a small portion of a utility’s energy portfolio, typically less than 2 percent. However, as distributed generation grows, there could be an eventual impact to the inspection and supervision fee which distributes revenue to the general fund. For now, the impact is indeterminate but expected to be very minimal.

Section two of the bill authorizes a rate rider. It is unclear whether the rate rider would apply to the distributed generation facility, or all other customers in the service area. As such, the impact to utility customers is unclear.

SIGNIFICANT ISSUES

Section one of the bill would allow suppliers of distributed renewable electricity to produce and sell electricity to certain consumers without being a regulated public utility. This section permits third party financing so that the owner of renewable energy generation equipment (e.g. solar panels) could place equipment on the consumer’s property (e.g. a building) and sell the electricity generated to the consumer without being considered a utility.

According to the PRC, the bill has the purpose of providing legal certainty to encourage the development of renewable energy distributed generation facilities without creating additional burdens or regulatory complications for public utilities.

The Attorney General’s Office (AGO) notes that this bill (may) present a form of utility deregulation, which the legislature rejected in 2003. It also raises several significant issues that could affect the vast majority of utility customers who do not connect renewable generation to their home or business, and whose rates may increase because of (the) utility(‘s) lost revenue, due to increased distributed generation. Because of this possibility there should be a provision added to the bill that protects utility customers from rate increases due to the utility’s lost or unrecovered revenue as a result of the existence of distributed renewable generation. Distributed renewables could eventually become large producers and providers of electricity to the public,

and as such, the utilities may not want to suffer lost revenues. Such lost revenues, including fixed costs, should be collected from customers owning or buying from the distributed renewable generation.

Additionally, the AGO notes that whether changing the PUA to say distributed renewable generators are not utilities may be opening a flood gate that need not be opened. The AGO suggests simply allowing the PUA to classify all sellers of electricity to the public as utilities, but provide an exemption to certain distributed renewable generation.

The AGO also reports that whether the Section 3 provision to allow utilities to create more holding companies is an appropriate legal step as utility holding companies are notoriously difficult to regulate under legal regulatory structures.

PERFORMANCE IMPLICATIONS

The New Mexico Environment Department's (NMED) Air Quality Bureau has a legislative performance measure to reduce annual statewide greenhouse gas emissions to a target level. Similarly, the accountability and performance contract with the executive contains goals for reduction of greenhouse gas emissions, as does the Executive Order on climate change contains goals for reduction of greenhouse gas emissions to 2000 levels by 2012, an additional 10 percent reduction by 2020, and a 75 percent reduction from 2000 levels by 2050.

Passage of this bill might establish a preference for renewable energy distributed generation facilities as opposed to other forms of renewable energy generation.

ADMINISTRATIVE IMPLICATIONS

New proceedings may be required to determine if proposed rate riders are fair, just and reasonable as dictated by the PUA. New proceedings would also be required for determination if proposed holding companies are in the public interest. In addition to the proceedings, the PRC will be required to review the effectiveness of programs and provide a report to the legislature.

On the other hand, the PRC would not incur administrative costs related to regulation of these facilities.

DUPLICATION

Duplicates HB181

TECHNICAL ISSUES

The PRC notes:

Section 2.A. of the bill provides that the Commission shall approve “interconnected rate riders” to recover the costs of certain services “only for new interconnected customers”. As drafted, it is unclear whether the amounts charged under the rate rider would:

1. Be imposed only on the new interconnected customers, or on all of the utility customers; and

2. If the amounts are to be charged solely to new interconnected customers, whether the utility would charge each new interconnected customer a different amount based on the costs of providing the services, or instead would charge all new interconnected customers the same amount based on the total amount of costs incurred to provide the services to the new interconnected customers.

The bill introduces new criteria for the determination of the reasonableness of rate riders. New standards would need to be introduced to cover evidence regarding ancillary and standby services.

Section 3.B. of the Bill is confusing and may need to be clarified.

OTHER SUBSTANTIVE ISSUES

This past year, the Public Regulation Commission made a ruling that third party providers of distributed generation should not be considered regulated utilities. This ruling is currently being challenged. Section one of HB 181 would make those challenges moot.

The classical composition of the utility industry is restructuring and with it services, rates and rate design are becoming more complex. Utilizing renewable resources, such as wind and solar power, and combined heat and power, fuel cells, microturbines, and other distributed generation technologies can create unique issues with the potential to substantially impact existing utility power grids, base rates, and project economics.

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